

SOUTH HOLLAND DISTRICT COUNCIL

Report of: Portfolio Holder for Assets and Planning
Deputy Chief Executive (Corporate Development) and S151 Officer

To: Cabinet – 14th December 2021

Author: Jordan Quincey, Housing Development Project Manager

Subject: Acquisition of S106 affordable housing for the Housing Revenue Account

Purpose: To set out details of the potential for the authority to acquire three S106 homes for Affordable Rent tenure, on a development site in the district.

Recommendations to Cabinet:

- 1) To approve the business case and approve the acquisition of three homes for the HRA.
- 2) To delegate to the Deputy Chief Executive (Corporate Development) and S151 Officer authority to agree the contractual matters (including any variation to the terms and conditions which may represent a minor departure from the scheme approved in the business case) including signing the contract/transfer document, the apportionment/use of RTB receipts to be utilised and other incidental actions that may be required and approving the associated due diligence and valuation required to purchase the properties.

1.0 BACKGROUND

1.1 In the last 5 years South Holland District Council has increased investment in new housing within the district and more recently has strengthened the capacity of the Strategic Housing Development team. This team appraises potential acquisition and development schemes; project manages on site delivery; and oversees the handover of new homes into management for South Holland's various delivery vehicles.

1.2 Since 2017/18, the Council has supported numerous new development schemes:

Scheme name	Delivery vehicle	Number of dwellings	Timescale	Development type	Status
Walters Close, Spalding	Welland Homes	15	Properties completed 2017/18	Acquisition of completed dwellings from developer, with discount on OMV.	Complete
Tennants Close, Long Sutton	Welland Homes	5	Properties completed 2018/19	Acquisition of completed dwellings from developer,	Complete

				with discount on OMV.	
Pankhurst Close, Spalding	Welland Homes	10	Properties completed in May 2019.	Welland Homes design and build contract.	Complete
Acquisition of S106 homes from Ashwood (Moulton, Cowbit, Donington)	HRA	18	Properties completed 2019/20	Acquisition of completed dwellings from developer, with discount on OMV due to S106 agreement.	Properties complete. End of defects stage.
Small Drove, Weston	HRA	34	Development completed 2020/21	Design and build contract.	Complete
Bentley Court, Spalding	Welland Homes	5	Purchase Completed August 2019	Acquisition of completed dwellings from developer, with discount on OMV.	Complete
Donington market acquisitions	HRA	7	Purchase completed December 2019	Acquisition of completed dwellings from developer, with discount on OMV.	Complete
Wignals Gate, Holbeach	HRA	19	Properties completing in phases from Oct 20	Acquisition of completed dwellings from developer, with discount on OMV due to S106 agreement.	In progress
Roman Bank	HRA	12	Pre-contract negotiations	Acquisition of completed dwellings	In progress

Cobgate, Whaplode	HRA	7	Pre-contract negotiations	Acquisition of completed S106 dwellings	In progress
Rough sleepers' accommodation	SHDC - General Fund	15	Properties completing in phases from April 2021 to August 2022	Acquisition and refurbishment of existing housing.	In progress
Tony Worth Close (Northons Lane) Holbeach	Welland Homes	4	Properties acquired March 2021	Acquisition of completed market dwellings with discount on marketing value	Complete

1.3 The SHDC Housing Development Project Manager has been seeking new development opportunities. This has involved liaison with agents, property developers and housing associations that are delivering mixed-tenure schemes within the district. Through these discussions, a new scheme to provide three S106 affordable homes has been identified.

2.0 SCHEME BUSINESS CASE

2.1 Officers have liaised with a local developer regarding the acquisition of two one-bedroom dwellings and one, two-bedroom dwelling as part of the S106 affordable housing obligations on their site at Albion Street, Crowland.

2.2 The units are a row of three terraced dwellings, the site has planning consent and accordingly the layout and mix of dwellings and tenures has been approved by SHDC.

2.3 As the homes have been designated as affordable homes in the Planning consent, they have been designed specifically for that purpose and accordingly are considered appropriate for the HRA.

2.4 The SHDC Housing Management team have been consulted regarding the scheme and are supportive of SHDC taking additional homes in this location and have indicated that the delivery of these homes would meet housing need.

2.5 Accelerating the delivery of new homes for the HRA will mitigate the impact on the HRA business plan of the loss of homes through RTB sales. It will also improve the nature and mix of homes within SHDC's stock. However, it should be noted that if these properties are purchased and let as affordable homes, the Right To Buy will also apply to these properties. In the event of a RTB application, the 'cost floor' rule will ensure that a tenant's discount does not reduce the RTB sale price below the amount that has been spent on the property in the 15 years prior to RTB; this includes the capital costs of acquisition.

2.6 The details of the three homes at the centre of this business case are detailed in the table below.

Location	Plot	Type	Tenure	Indicative handover date
Albion Street, Crowland	8	2 bed end-terraced house	Affordable Rent	February - March 2022 *
	9	1 bed mid-terraced house	Affordable Rent	February - March 2022 *
	10	1 bed end-terraced house	Affordable Rent	February - March 2022 *
TOTAL		3		

**Developer anticipated programme subject to confirmation.*

- 2.7 Officers have undertaken a business planning exercise for the delivery of these three homes which is provided at Appendix A.
- 2.8 The Developer is retaining two two-bedroom terraced properties to sell at 80% discounted value to fulfil the total affordable housing requirement within the S106.
- 2.9 An offer has been made to the developer subject to contract, legal due diligence, formal valuation and full approval. This offer has been accepted.
- 2.10 The financial assessment assumes that the Affordable Rented tenure homes will be let at 80% of the local market rent value or at the Local Housing Allowance rate in accordance with the S106 agreement. Homes England stipulate a requirement to approve Affordable Rents being charged on any site which is not grant funded. Officers will submit a request to Homes England as part of the due diligence process. The S106 agreement allows the rented homes to be provided as Affordable Rent or Social Rent tenure. In the event that Homes England does not provide consent for the homes to be provided as Affordable Rent tenure, they will still be purchased but will be provided as Social Rent tenure instead. This creates a risk as set out in paragraph 12.4.3.
- 2.11 In terms of the overall Capital Programme for HRA Housing Development, there is total approved provision of £13m for schemes subject to detailed approval for the period 2021/22 to 2024/25. To date, Roman Bank Spalding and Cobgate Whaplode have been approved.
- 2.12 Officers will negotiate a contract for the purchase of these properties which seeks to provide the most advantageous position for the authority. A solicitor will be appointed to act on SHDC's behalf in order to ensure thorough due diligence will be undertaken, prior to entering contract.
- 2.13 Given the nature of the homes as S106 affordable housing, the authority will have limited influence over the style and construction methodology of the properties. However, they will have to be delivered in accordance with the contract and with all appropriate regulatory certification in place. In addition, the properties will be required to benefit from a structural warranty for a minimum of 10 years. These key documents will be listed within the contract and will need to be provided prior to completion taking place. The quality of the homes will also be checked by a Buyers Representative appointed to act in the authority's best interests.
- 2.14 In the event that the homes are not constructed in accordance with the terms of the contract, the authority will not have to purchase the homes. Officers will maintain regular contact with the developers through the build process to seek to ensure where possible that the homes are delivered as agreed. The properties will be provided with a 10-year structural guarantee by Premier Guarantee. This provides protection against structural defects in workmanship or the risk of construction materials failure.

- 2.15 The process of due diligence may impact contract negotiations as more information is identified about the scheme. The contract is a negotiation between parties and officers will endeavour to negotiate the best position for the authority throughout. Any elements that are different to those assumed at approval will be reviewed as part of the due diligence review and approved by the Section 151 Officer in their role to agree the contractual matters to purchase the properties.
- 2.16 The development consists of 22 homes in total and the road servicing the affordable dwellings will be adopted. Therefore, the affordable homes should not be party to any management company which may be established for the remainder of the site, or any additional service charges.
- 2.17 As SHDC has not previously worked with this developer, this contract will increase the number of partners which benefit from SHDC investment within the district.
- 2.18 The developer has approached Registered Providers within the district for offers to acquire the affordable homes both in winter 2019 and in August 2020. However, they did not receive any offers from other providers (likely to be due to the scheme comprising only 3 dwellings and RPs tend to seek a higher quantum of homes in a contract for S106 homes). Unless a partner is found the developer may have no option but to reassess their approach to the affordable delivery on this site

3.0 SHARED OWNERSHIP SALES

- 3.1 This proposal does not contain the acquisition of shared ownership dwellings. The developer is retaining two two-bedroom terraced properties to sell at 80% discounted value to fulfil the total affordable housing requirement within the S106.

4.0 RIGHT TO BUY SALES RECEIPTS

- 4.1 On the 19th March 2021, Government published its response to a consultation on the use of receipts from RTB sales. The consultation response sets out changes to the RTB receipts system to help local authorities build more council homes. The reforms seek to give authorities substantially increased flexibilities.
- 4.2 The changes include extending the timeframe that local authorities have for spending RTB receipts from 3 years to 5 years; the ability to utilise the receipt for a higher percentage of a project's costs; enabling shared ownership tenure dwellings to be funded by receipts; introducing a cap on the use of RTB receipts for acquisition projects.
- 4.3 Appendix A provides a financial evaluation which assumes that 30% of capital costs are funded from RTB receipts. Given the RTB sales receipts reforms it is possible that 40% of total scheme costs can be met from RTB receipts. If this is the case, this will improve the return on investment for this scheme.

5.0 HRA Housing Delivery Framework

- 5.1 In November 2021, Council approved a new policy framework: the HRA Housing Delivery Framework. The purpose was to establish a framework within which executive decisions will be made regarding new housing schemes which utilise the approved HRA Development budget. Individual projects which are within the criteria of the framework can be approved by the Executive, subject to a robust business case.

5.2 The scheme at Albion Street Crowland which is subject to this business case, is considered by officers to be within the scope of the HRA Housing Delivery Framework, as summarised below:

- The scheme is a S106 Affordable Housing acquisition
- The tenure mix has been approved through the planning process and meets evidenced need
- The mix of property types (1 and 2-bedroom accommodation) will meet evidenced need
- The homes are in a suitable location for affordable housing, close to amenities
- The specification of the homes (newbuild homes with a 10-year warranty) will enhance SHDC's stock portfolio and support the authority's ambition to be a landlord of choice
- Initial due diligence has indicated that the site will not be subject to a management company and the road will be adopted
- Purchasing these homes will increase the range of development partners which the authority works with as the authority has not previously contracted with this developer
- It is not possible for SHDC's Building Control Team to undertake the inspections as the homes are already at an advanced stage of construction and building inspections have been carried out at the appropriate stages by an approved inspector.

6.0 Key Considerations

6.1 There are a number of key matters to consider relating to this scheme which are as follows:

- An offer for the dwellings has been submitted and accepted by the developer.
- The units are designated S106 affordable homes and as such they are restricted to use as affordable homes.
- As this is an Affordable Rented tenure scheme it is eligible for the use of Right to Buy receipts held by SHDC and these could be utilised for this project. If the Right to Buy receipts part-fund the acquisitions, the return to SHDC will increase as the direct capital invested decreases. The two assessments are included in the financial evaluation (Appendix A). Given the RTB sales receipts reforms, summarised in section 4.0 above, it is possible that 40% of capital costs will be met from RTB receipts. If this is the case, the financial return to the Council will increase. Officers will seek to ensure that the maximum RTB funding is utilised. Any elements that are different to those assumed at approval will be reviewed as part of the due diligence review and approved by the Section 151 Officer in their role to agree the contractual matters to purchase the properties.
- The Housing Options team has confirmed that there is housing need identified in this location for one and two-bedroom accommodation.
- The financial appraisal assumes that the units are let as Affordable Rent tenure. This means that Homes England will be required to approve the charging of Affordable Rent and if the scheme is supported by Members a request will be made to Homes England to confirm this tenure can be applied.
- It is acknowledged that this is not the only scheme which the authority could pursue and that there are other development sites in the district. However, this business case should be considered on the basis of the scheme specific information provided.

7.0 HOUSING NEED

- 7.1 New affordable homes contribute towards meeting housing need in the district.
- 7.2 The latest Housing Needs Assessment identifies a need for 437 new affordable homes to be provided in the district each year, 303 of which should be Rented homes, 35% of these should be one-bedroom accommodation and 35% of these should be two-bedroomed accommodation.
- 7.3 On average, 67 new affordable homes (including rented and shared ownership) have been provided in the district each year (2016/17 to 2020/21) by SHDC and other Registered Providers. Between 1st April and 1st December 2021, there were a further 180 affordable housing completions in the district
- 7.4 It is anticipated that the demand for affordable housing will increase as a result of the pandemic. Analysis of the SHDC Housing Register indicates that the number of applicants on the register has increased from 350 at the end of March 2020 to 378 at the end of November 2021. Additionally, an increased number of people are unable to address their housing need once they are threatened with homelessness and are therefore presenting as homeless.
- 7.5 The housing register indicates a demand for 27 one-bedroom homes and 15 two-bedroom homes within Crowland at the present time.

8.0 PROPOSED TIMETABLE

- 8.1 If this scheme is supported, the proposed timetable for future activity is as follows:

Indicative date	Activity	Decision
December 2021	Cabinet	To approve the business case for the acquisition of the properties. To delegate authority to sign the contract documentation to S151 Officer or similar, subject to satisfactory legal due diligence. To amend the Capital Programme to approve the spend for this project.
Dec 2021- Feb 2022	Due diligence	To be considered and signed off by S151 Officer
Feb - March 2022	Exchange on contract	Delegated to Officers.
March 2022 *	Completion. Handover of properties	Delegated to Officers

**Developer anticipated programme subject to confirmation.*

9.0 OPTIONS

- 9.1 **Option 1: To identify this scheme as being within the criteria of the HRA Housing Delivery Framework; to approve the business case for the purchase of three S106 affordable homes; to delegate authority to Officers to conclude the due diligence and complete the purchase.**

Under this option, due diligence and contract negotiations would be undertaken, and external legal services commissioned. SHDC would exchange on the contract, with the purchase and transfer to occur once the properties are complete.

9.2 **Option 2: Do Nothing.**

Under this option, the authority would not proceed to purchase the properties. As a consequence, the expected benefits listed in Section 9 will not be realised. Officers would seek to identify alternative appropriate schemes for consideration by the Executive.

10.0 **REASONS FOR RECOMMENDATION(S)**

10.1 The recommendations to proceed with the purchase of three affordable homes relates to the expected benefits detailed in section 11.

11.0 **EXPECTED BENEFITS**

11.1 It is anticipated that the report recommendations will support the realisation of the following benefits:

- **A return on investment.** As set out within the financial evaluation (Appendix A), there is a positive business case associated with the proposed investment.
- **The delivery of 3 additional dwellings into the HRA.** These homes meet the needs of those who require low cost rented accommodation.
- **Meeting housing need.** The homes proposed will meet housing need in a location where there is evidence of a need for additional affordable homes.
- **The replacement of homes sold through Right to Buy.** On average, 21 Council homes have been purchased by tenants each year since 2017, by virtue of the Right to Buy. Since 1st April 2021, a further 20 properties have been sold to tenants. The delivery of new affordable homes can replace those homes lost each year, mitigating the impact of these losses on the HRA business plan.
- **The new homes can be part-funded from the time limited RTB receipts.** Investing the RTB receipts on new rented housing ensures that the receipts do not have to be returned to Government. Additionally, the return to SHDC will increase as the direct capital invested decreases.
- **Market confidence.** The Council acting as a proactive purchaser of S106 properties, will provide confidence to local developers of the authority's aspiration to facilitate sites to come forward and of the demand for S106 affordable homes.

12.0 **IMPLICATIONS**

In preparing this report, the report author has considered the likely implications of the decision. Where the report author considers that there may be implications under one or more of these headings, these are identified below.

12.1 **Constitutional & Legal**

12.1.1 The authority will be acquiring these units in accordance with section 9 of the Housing Act 1985.

12.1.2 In November 2021, the HRA Housing Delivery Framework was adopted by Council. The framework relates to any investment decisions utilising the 'HRA Capital Programme budget

for Housing Development – schemes subject to detailed approval'. All HRA housing delivery projects which meet the criteria within the framework can be approved by the Executive, subject to a detailed business case. This scheme is considered to meet the criteria of the framework.

12.1.3 As per previous S106 acquisitions, the legal support for the contract negotiations and purchase will be provided by an external firm.

12.2 **Contracts**

12.2.1 A contract will be required between SHDC and the developer. SHDC has not previously worked with this developer. The handover of each property will take place as the homes are ready to be occupied. The contract will contain a list of requirements and the properties will not be purchased until these requirements have been met. Additionally, SHDC will appoint a Buyers Representative to provide quality assurance at handover.

12.2.2 The contract will be reviewed by the Council's appointed solicitor.

12.3 **Corporate Priorities**

12.3.1 The recommendations contained within the report will make a notable contribution to the realisation of the Council's corporate priority around 'Your Home'.

12.3.2 The scheme supports "delivery of housing solutions to meet local needs and aspirations."

12.3.3 The recommendations also support the Council's objective to "ensure that our residents are enabled to live in high-quality housing no matter the tenure."

12.4 **Financial**

12.4.1 There is a detailed financial evaluation with financial implications set out in confidential Appendix A.

12.4.2 In terms of financial capacity, there is a total approved capital provision of £13m in the Capital Programme for the acquisition of new affordable homes by the HRA, for the period 2021/22 to 2024/25.

12.4.3 In the event that Homes England does not provide consent for the homes to be provided as Affordable Rent tenure, they will still be purchased but will be provided as Social Rent tenure instead. This creates a risk that the anticipated financial return will be lower as the rental income for social rented housing is lower. Sensitivity analysis has been prepared which indicates that the scheme will still provide a positive financial return if the properties are provided as Social Rent tenure.

12.5 **Reputation**

12.5.1 Risks around reputation are mitigated through a robust project management structure. The Housing Development team work closely with colleagues in Communications on all projects and meet on a regular basis to ensure that a Communications Plan is in place where appropriate.

12.5.2 Regular engagement with the developer will be arranged once the scheme is approved and quality assurance will be carried out by an externally appointed Buyers Representative.

12.6 Risk Management

12.6.1 Acquisition and development activity has within it inherent risks. Officers strive to identify and manage risk at each stage of the project.

12.6.2 Each project has a risk register that is reviewed throughout the lifecycle of a project by the project team.

12.6.3 Risks around acquisition activity are sought to be mitigated through regular review and the appointment of professional expertise to provide legal due diligence, and accredited valuation advice to ensure value for money, in terms of the cost of the project.

12.7 Stakeholders / Constitution / Timescales

12.7.1 The delivery timetable will be reviewed once final scheme approval is in place. However, the developer has suggested that the units will be completed in February 2022.

12.7.2 As all the homes are proposed to be Affordable Rent tenure these homes are obliged, as a statutory tenure, to be declared to Homes England. Officers will write to Homes England to seek their consent to provide these homes as Affordable Rent tenure. Therefore, whilst not grant-funded units, Homes England are a stakeholder in this acquisition. Consent has been provided to SHDC, by Homes England, for other S106 schemes which have been delivered by the authority.

13 WARDS/COMMUNITIES AFFECTED

Crowland and Deeping St. Nicholas ward

14 ACRONYMS

HRA – Housing Revenue Account

DLUHC – Department for Levelling Up, Housing and Communities

RTB – Right to Buy

S106 – Section 106 of Town and Country Planning Act 1990 (as amended)

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Key Decision: Y

Exempt Decision: Exempt – appendix only

This report refers to a Discretionary Service

Confidential Appendices attached to this report:

Please note that the following appendices are not for publication by virtue of Paragraph 3 (Information relating to the financial or business affairs of any particular person (including the authority holding that information

Confidential Appendices attached to this report:

Confidential Appendix A - Financial Evaluation